secution of minor or trivial offences. *People v. Justices*, 74 N. Y. 406; *Byers v. Commonwealth*, 42 Pa. St. 89. Other courts make the distinction that it is valid to have a criminal trial without jury in the first instance when the defendant is given an unfettered right of appeal and trial by jury in the appellate court. *Jones v. Robbins*, 8 Gray (Mass.) 329; *Emporia v. Volmer*, 12 Kan. 622.

CORPORATIONS—STOCK—CONSTRUCTION OF BY-LAW.—GELLERMAN V. ATLAS FOUNDRY AND MACH. CO., et al. 87 Pac. (WASH.) 1059.—*Held*, that when, under a by-law of a corporation providing that the trustees may at their discretion declare dividends, a dividend is declared on the paid-up stock, a like dividend upon unpaid subscriptions for stock accrues and must be paid. Root, Crow & Hadley, JJ. *dissenting*.

This seems to be a new question in the American courts, though in accord with the English rule, *Cook on Stockholders and Corporation Law* § 540; *Oakbank Oil Co. v. Crum L. R.*, 8 App. 65. Its principle does not appear to be fully established in the United States, *Thompson v. Erie Ry. Co.* 42 How. Pr. 68 (N. Y); *Bailey v. Hannibal etc. Ry. Co.*, 2 Fed. Cas. No. 736. Equity will prevent any discrimination in the distribution of dividends among stockholders of the same class. *Cratty v. Peorie Law Library Assn.*, 76 N. E. (Ill.) 707. The class is determined by a pledge of profits in favor of certain shares in preference to others. *Taft v. Hartford etc. Ry. Co.* 8 R. I. 310. Against the main case it is held that the discretion of the trustees is controlling, *Jackson v. Newark Plankroad Co.*, 31 N. J. T. 277; *Williams v. Western U. Tel. Co.*, 93 N. Y. 162, with which, in the absence of fraud the courts will not interfere. *Bryan v. Sturgis Nat. Bank*, 90 S. W. (Tex.) 704. The By-law is a part of the contract. *Hazelton v. Belfast, etc. R. Co.*, 79 Me. 410; under which no dividends "accrue" until they are declared by the trustees. *Parks v. Automatic Bank Punch Co.*, 14 Daly (N. Y.) 424.

CRIMINAL LAW—EVIDENCE—EVIDENCE OF OTHER OFFENSES.—TOPOLEWSKI V. STATE, 109 N. W. 1037 (WIS.)—*Held*, on a prosecution for theft, the state claiming that the accused had conspired with another to steal property, it was error to admit evidence that the accused had, prior to the occurence in question, conspired with another person to steal prosecutor's property. In any transaction, evidence of a similar act is relevent only for the purpose of showing the intent. *U. S. v. Fleming*, 18 Fed. Reporter 907. Evidence of similar frauds on the part of the defendant is admissible for purpose of showing the *animus*. *People v. Hughes*, 36 N. Y. Supp. 493. In criminal prosecution, evidence should be confined to the offence charged, except where another act is so connected with it that its commission directly tends to prove some element of the alleged offense. *Paulson v. State*, 118 Wis. 89. Testimony as to a former offense in the same house, and with which the defendant was connected, is irrelevant, unless it shows *animus*. *Lightfoot v People*, 16 Mich. 507. And it is not competent for the prosecution to place before the jury facts tending to show another distinct offence, so as thereby to raise a presumption that the party is guilty of the offense charged. *Lightfoot v. People*, 16 Mich. 507.

CRIMINAL LAW—FAILURE OF DEFENDANT TO TESTIFY—COMMENT THEREON REVERSIBLE ERROR.—PERKINS V. TERRITORY, 87 PAC. 297 (OKL.). *Held*, where the defendant is on trial, charged with the commission of a crime and fails to

testify in his own behalf, and the prosecution comments upon such failure to the jury, such comments constitute reversible error.

Prosecution has no right whatever to refer to the defendant, as to why he did not clear up the affair. *People v. Doyle*, 12 N. Y. 836. No language shall be used by the prosecution to give to the jury the impression that since the defendant did not testify, his guilt is established. *Wilson v. U. S.*, 149 U. S. 60. And the state cannot refer indirectly to the fact that the defendant did not take the stand, for it may cause in the minds of the jurors a presumption of guilt. *State v. Moxley*, 102 Mo. 374. *Austin v. State*, 102 Ill. 261. *Dawson v. State*, 24 S. W., 414.

CRIMINAL LAW—LIMITING ARGUMENT OF COUNSEL—DISCRETION OF COURT. PEOPLE V. FERNANDEZ, 87 PAC. 1112 (CAL.). *Held*, that an order of the court, limiting the time of the argument of counsel to one and three-fourth hours to each side, was an abuse of discretion, requiring a reversal, on it appearing that the counsel for defendant objected thereto, and showed that he could not complete his argument within the time limited.

The constitutional provision guarantying to an accused the right to be heard by himself or counsel, does not deprive the court of the discretionary power to limit the argument of defendant's counsel, to a certain length of time. *Peagler v. State*, 110 Ala. 11. The limitation is within the discretion of the trial court. *People v. Kelly*, 94 N. Y. 526. With this discretion the appellate court will not interfere unless it clearly appears from the record that the rights of the prisoner were prejudiced. *State v. Shores*, 31 W. Va. 491. What shall be an unreasonable limit depends upon the circumstances of the case, its complexity or simplicity, the amount and character of the testimony, the number of witnesses and time consumed in hearing the case. *12 Cyc. 569.* The rule does not apply to arguments on motions and questions arising during the trial. *State v. Jones*, 117 N. C. 768. The courts of Montana, contrary to the general rule hold that in fixing in advance, the exact time needed cannot be correctly determined, and if the court so fixes there is error. *State v. Tighe*, 27 Mont. 327.

CRIMINAL LAW—PLEA IN BAR—EXISTENCE OF COURT—STATE V. HALL, 55 S. E. 806 (N. C.).—*Held*, an alleged plea to the jurisdiction of the court in a criminal case, alleging that the court was not lawfully constituted because the governor was out of the state at the time he directed the holding of the term, and signed the judge's commission, was a nullity, since the court could not pass on its own existence as a court.

Jurisdiction is the power to hear and determine a cause, the authority by which judicial officers take cognizance of and decide causes, *U. S. v. Arredondo*, 31 U. S. 691. The institution of a suit in a court that has no jurisdiction is null. *Mora v. Kuzae*, 21 La. Ann. 754. The proper course is to dismiss the action and not direct a verdict for the defendant, as that would be an exercise of jurisdiction and not a disclaimer thereof. *Clark v. Car.* 45 Ill. App. 469. The doctrine of a *de facto* officer does not apply even though one is in possession of an office and exercising its functions with silent public acquiescence, though wrongfully in possession, is an officer *de facto* and his acts binding, *Ellis v. Deaf and Dumb Asylum*, 68 N. C. 423; for there cannot be a *de facto* officer without a *de jure* office. *Willard v. Pike*, 59 Vt. 202.

DEATH-ACTION GROUNDS AND MEASURE OF DAMAGES.—WILMONT V. MCPADDEN, 65 ATL. 157 (CONN.).—In an action for the death of a child, *Held*, that